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## A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Act 103, Session Laws of Hawaii 2015, is  
2 amended by amending section 2 to read as follows:

3           "SECTION 2. Chapter 323F, Hawaii Revised Statutes, is  
4 amended by adding a new part to be appropriately designated and  
5 to read as follows:

6           "PART       .   PUBLIC-PRIVATE PARTNERSHIPS FOR THE DELIVERY OF  
7           HEALTH CARE SERVICES AT [MAUI] REGIONAL SYSTEM FACILITIES  
8           §323F-A Definitions. As used in this part:

9           "Nonprofit management entity" means a nonprofit  
10 organization duly authorized to transact business in the State,  
11 the sole shareholder or member of which is the private entity,  
12 whose principal purpose is to manage and operate a medical care  
13 facility.

14           "Pre-transfer facility" means a facility of the Maui  
15 regional system prior to its transformation into a transferred  
16 facility.



1 "Private entity" means a business organization duly  
2 authorized to transact business in the State that:

3 (1) Has a certificate of need to operate one or more  
4 licensed hospitals in the State obtained from the  
5 state health planning and development agency pursuant  
6 to part V of chapter 323D; or

7 (2) Is the sole member of a nonprofit management entity or  
8 hospital that has a certificate of need to operate one  
9 or more licensed hospitals in the State obtained from  
10 the state health planning and development agency  
11 pursuant to part V of chapter 323D.

12 "Transfer completion date" means the date specified as the  
13 transfer completion date in an agreement entered into pursuant  
14 to section 323F-B, including any extensions allowed under the  
15 terms of such agreement.

16 "Transferred facility" means a medical facility of the Maui  
17 regional system for which the right and responsibility to  
18 manage, operate, and otherwise provide health care services at  
19 the facility is transferred to a private entity or its nonprofit  
20 management entity pursuant to this part.



1           §323F-B Transfer of right and responsibility to manage,  
2 operate, and provide health care services in a facility of [the  
3 Maui] a regional system to a nonprofit management entity. (a)  
4 Notwithstanding any other law to the contrary, including but not  
5 limited to section 27-1, section 76-16(b) and other sections of  
6 chapter 76, chapters 78, 89, 89A, 89C, and 171, part V of  
7 chapter 323D, and sections 323F-11 and 323F-31, the governor,  
8 with the assistance of the chief executive officer of the  
9 corporation, and the regional chief executive officer of the  
10 [Maui] affected regional system, or their designees, shall  
11 negotiate with a private entity to transfer the right and  
12 responsibility to manage, operate and otherwise provide health  
13 care services at one or more facilities of the [Maui] regional  
14 system[, including Maui memorial medical center, Kula hospital  
15 and clinic, and Lanai community hospital,] to a nonprofit  
16 management entity wholly-owned by the private entity; provided  
17 that the private entity submitted a statement of interest in  
18 response to a notice published in accordance with section 1-28.5  
19 by the [Maui] regional system board, inviting private entities  
20 to submit statements of interest in acquiring the right and  
21 responsibility to manage, operate and otherwise provide health



1 care services in one or more of the [~~Maui~~] regional system's  
2 facilities.

3 (b) Any agreement negotiated by the governor and entered  
4 into by the private entity and the governor, the corporation  
5 board, and the [~~Maui~~] regional system board, shall, at minimum,  
6 include a transfer completion date and a plan and schedule for  
7 completing the transfer that includes:

8 (1) Provisions and deadlines for conducting and completing  
9 due diligence;

10 (2) Provisions and a deadline to terminate the agreement  
11 before a transfer is completed, at the parties'  
12 respective option;

13 (3) Provisions for winding-down operations at the  
14 transferred facility or facilities and for terminating  
15 the agreement in the event that the lease entered into  
16 pursuant to section 323F-D is terminated before the  
17 lease expires or the private entity or its nonprofit  
18 management entity abandons or otherwise discontinues  
19 its provision of health care services in a transferred  
20 facility; and



1           (4) Provisions to transfer or assign interests in  
2           equipment and furnishings, including any leases for  
3           the same; accounts receivable; medicare and other  
4           provider agreements; business and commercial licenses  
5           and registrations; intellectual property and goodwill;  
6           administrative, financial, and medical records and  
7           information; or any other interests or property of the  
8           Maui regional system facility or facilities to be  
9           transferred under this part, that the parties agree to  
10          transfer or assign.

11          (c) On and after the transfer completion date for the  
12          transfer of one or more facilities of the [Maui] regional system  
13          to a private entity or its nonprofit management entity pursuant  
14          to this part, the State, the corporation, and the [Maui]  
15          regional system and its board shall cease to have any  
16          responsibility for or control over the management and operation  
17          of the facility or facilities transferred by the agreement  
18          pursuant to this part.

19          §323F-C **Approvals required.** Any documents associated with  
20          the transfer of a [Maui] regional facility or facilities under  
21          this part shall be subject to review by the attorney general and



1 the director of finance in their capacity to advise the  
2 governor.

3 §323F-D Real property; terms and conditions. (a) The  
4 corporation shall enter into a fixed-term lease with the private  
5 entity or its nonprofit management entity to rent the real  
6 property, including all improvements and fixtures on the  
7 property, of the [~~Mau~~] regional system facility or facilities  
8 that is to be transferred to the private entity or its nonprofit  
9 management entity under this part.

10 (b) At minimum, the lease shall include the following  
11 terms and conditions:

12 (1) The lease shall not be terminated other than for good  
13 cause and upon a minimum of three hundred sixty-five  
14 days prior written notice to ensure that the delivery  
15 of health care services to the community served will  
16 not be disrupted;

17 (2) During the term of the lease, the private entity or  
18 its nonprofit management entity shall have exclusive  
19 control of all matters related to the management,  
20 operation, and provision of health care services in



1 the leased facilities, except as otherwise set forth  
2 in the lease;

3 (3) The responsibility to oversee the performance of the  
4 terms and conditions of the lease by the private  
5 entity or its nonprofit management entity shall rest  
6 with the [Maui] regional system board as the custodial  
7 caretaker of the real property under section 323F-3.5;  
8 and

9 (4) The corporation or the State shall retain ownership of  
10 the leased property throughout the term of the lease.

11 **§323F-E Transfer or assignment of other business assets.**

12 Provisions to transfer ownership or assign the interest of the  
13 corporation or the [Maui] regional system in some or all of the  
14 equipment and furnishings of the facility or facilities  
15 transferred to the private entity or its nonprofit management  
16 entity under this part shall be included in the lease entered  
17 into under section 323F-D.

18 **§323F-F Liabilities.** (a) The State, the [Maui] regional  
19 system board, or the corporation, separately or collectively,  
20 shall be responsible for any and all obligations incurred by the  
21 facility or facilities to be transferred, the Maui regional



1 system, or the corporation prior to the transfer completion date  
2 including any accounts payable, accrued paid time off, debt,  
3 capital leases, malpractice liabilities, and other obligations  
4 incurred before the transfer completion date. Any and all  
5 liabilities of the pre-transfer facility that were transferred  
6 to the corporation upon its creation by Act 262, Session Laws of  
7 Hawaii 1996, all liabilities of the pre-transfer facility  
8 related to collective bargaining contracts negotiated by the  
9 State, and the liability for all current outstanding post-  
10 employment benefits of the regional system or the corporation  
11 shall remain the responsibility of the State.

12 (b) All liabilities arising out of a transferred  
13 facility's management and operation in a transferred facility,  
14 on or after the transfer completion date, shall be the  
15 responsibility of the private entity or its nonprofit management  
16 entity.

17 **§323F-G Employment, wages, and benefits.** (a) The  
18 corporation and the unions representing employees of the  
19 facility or facilities shall meet to discuss the impact of a  
20 transfer on the employees and the feasibility of tempering the





1 adverse effect of layoffs by amending the employees' collective  
2 bargaining agreements pursuant to section 89-8.5.

3 (b) The employees working at a transferred facility shall  
4 be subject to laws and regulations that apply to private sector  
5 employees. The employees of a private entity or its nonprofit  
6 management entity shall not be governed by state laws that apply  
7 to public officers and employees of the State including but not  
8 limited to section 76-16(b) and all other sections of chapter  
9 76, chapters 89, 89A, and 89C, and any other laws and  
10 regulations that govern public or government employment in the  
11 State.

12 (c) The private entity or its nonprofit management entity  
13 shall offer all employees of the pre-transfer facility,  
14 employment for a period of no less than six months after the  
15 transfer completion date.

16 (d) No employee of the corporation who is separated from  
17 service as a result of implementation of an agreement and  
18 transfer under this part shall suffer any loss of any previously  
19 earned rights, benefits or privileges.

20 (e) Subject to subsection (c), the private entity or its  
21 nonprofit management entity shall take all reasonable steps



1 necessary to provide for a smooth transition of employees from  
2 state employment to private employment by the private entity or  
3 its nonprofit management entity at a transferred facility.

4       **§323F-H Operating support.** (a) Without regard to chapter  
5 42F, the private entity or its nonprofit management entity to  
6 which one or more of the facilities of the [Maui] regional  
7 system has been transferred pursuant to this part may seek funds  
8 from the State for its operating costs, as defined in section  
9 37-62, of a transferred facility by preparing a budgetary  
10 request in accordance with procedures and criteria established  
11 by the director of finance. In no event shall the amount  
12 requested exceed the amount appropriated for the operating costs  
13 of [~~the Maui~~] that regional system for the 2014 fiscal year.  
14 The director of finance shall review the request and may include  
15 some or all of the amount requested in the executive budget of  
16 the department of health. Any appropriation made in response to  
17 the request shall be subject to the allotment system generally  
18 applicable to all appropriations made by the legislature. The  
19 department of health shall be responsible for transferring the  
20 funds allotted to the private entity or its nonprofit management  
21 entity for expenditure.



1           (b) To qualify to request funds from the State under this  
2 section, the private entity or its nonprofit management entity  
3 to which one or more of the facilities of the [~~Mau~~] regional  
4 system has been transferred pursuant to this part shall satisfy  
5 the following standards and conditions:

6           (1) Be duly authorized to transact business in the State,  
7 and determined and designated to be a nonprofit  
8 organization by the Internal Revenue Service;

9           (2) Be licensed and accredited, in accordance with  
10 federal, state, or county statutes, rules, or  
11 ordinances, to conduct the activities for which  
12 funding is sought;

13           (3) Have a governing board whose members have no material  
14 conflict of interest and serve without compensation;

15           (4) Have bylaws or policies that describe the manner in  
16 which business is conducted, prohibit nepotism, and  
17 provide for the management of potential conflict of  
18 interest situations;

19           (5) Be in compliance with all of the requirements of  
20 chapter 323D with respect to the transferred facility  
21 and any other health care facility it operates;



1           (6)   Submit tax clearances from the director of taxation  
2                   and the Internal Revenue Service to the effect that  
3                   all tax returns due have been filed and all taxes,  
4                   interest, and penalties levied or accrued against have  
5                   been paid;

6           (7)   Submit to an annual audit, disclose revenue  
7                   projections, and prepare an annual internal  
8                   performance audit and itemized financial statements,  
9                   including reimbursement rates, with respect to the  
10                  transferred facility, to the extent practicable, in  
11                  the same manner as described in section 323F-22; and

12          (8)   Submit its annual budget with respect to a transferred  
13                  facility to the legislature for review at least twenty  
14                  days prior to the convening of the regular legislative  
15                  session.

16          §323F-I   **Capital project support.**   (a)   Without regard to  
17   chapter 42F, the private entity or its nonprofit management  
18   entity to which one or more of the facilities of the [Maui]  
19   regional system has been transferred pursuant to this part may  
20   seek funds from the State for capital expenditures, as that term  
21   is defined in section 37-62, for a transferred facility for each



1 or all of the first ten years of the lease entered into under  
2 section 323F-D. Each year's request for funds shall be  
3 submitted to the director of finance in accordance with  
4 procedures and criteria established by the director and shall be  
5 reviewed by the director and comptroller with pertinent capital  
6 planning and expenditure documents and the capital planning  
7 procedures supplied by the private entity or its nonprofit  
8 management entity. The director of finance may include some or  
9 all of the funds requested in the executive budget of the  
10 department of health. Any appropriation made in response to a  
11 request shall be subject to the allotment system generally  
12 applicable to all appropriations made by the legislature. The  
13 department of health shall be responsible for transferring the  
14 funds allotted to the private entity or its nonprofit management  
15 entity for expenditure.

16 (b) After the first ten years of the lease entered into  
17 under section 323F-D, the nonprofit management entity and the  
18 private entity shall be responsible for funding all capital  
19 expenditures of the transferred facility.

20 (c) To qualify to request funds from the State under this  
21 section, the private entity or its nonprofit management entity



1 shall satisfy all of the standards and conditions set out in  
2 section 323F-H(b). In addition, the transferred facility shall  
3 demonstrate that the capital projects constructed, operated, and  
4 maintained with the requested funds will be in compliance with  
5 all federal, state, and county health care planning laws and  
6 rules, land use and zoning laws and rules, environmental laws  
7 and rules, and building and health codes, rules, and  
8 regulations.

9 §323F-J Strategic commitment during term of lease. (a)

10 The private entity shall be committed to supporting the  
11 nonprofit management entity and any transferred facility to  
12 achieve excellence and improve access to services in [Maui] the  
13 affected county.

14 (b) The private entity and the nonprofit management entity  
15 shall establish a governance and management structure for a  
16 transferred facility that seeks to improve its performance. The  
17 private entity and the nonprofit management entity shall apply  
18 efficiencies of scale, consolidation of shared services, and  
19 administrative and technological expertise to improve the health  
20 care performance of a transferred facility.



- 1           (c) The private entity and the nonprofit management entity  
2 shall support a transferred facility in:
- 3           (1) Expanding primary care access throughout [~~Maui~~] the  
4           county;
- 5           (2) Recruiting and rotating specialists to fill current  
6           service gaps;
- 7           (3) Extending the private entity or its nonprofit  
8           management entity's service line coordination to  
9           [~~Maui~~] the county, including but not limited to  
10          cancer, cardiology, orthopedics, mental health,  
11          pediatrics, and women's health services;
- 12          (4) Coordinating long-term care patients and reducing wait  
13          lists;
- 14          (5) Upgrading facilities and equipment as needed to  
15          provide high quality care and to enhance patient  
16          experience; and
- 17          (6) Incorporating the [~~Maui~~] county region into the  
18          private entity or its nonprofit management entity's  
19          value-based contracting initiatives to better align  
20          quality and cost initiatives." "



# H.B. NO. 1719

1 SECTION 2. Act 103, Session Laws of Hawaii 2015, is  
2 amended by amending section 7 to read as follows:

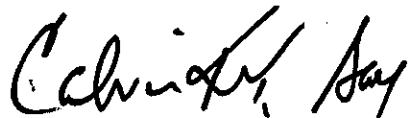
3 "SECTION 7. This Act shall take effect upon its approval[  
4 ~~provided that the amendment made to section 89-8.5, Hawaii~~  
5 ~~Revised Statutes, in section 3 of this Act shall be repealed one~~  
6 ~~year after the transfer completion date specified in an~~  
7 ~~agreement negotiated and entered into under chapter 323F, part~~  
8 ~~\_\_\_\_\_ , Hawaii Revised Statutes, and section 89-8.5, Hawaii~~  
9 ~~Revised Statutes, shall be reenacted in the form in which it~~  
10 ~~read on the day prior to the effective date of this Act]."~~

11 SECTION 3. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

INTRODUCED BY:



JAN 21 2016





# H.B. NO. 1719

**Report Title:**

HHSC; Regional System Facilities; Public-Private Partnerships;  
Transfer to Private Nonprofit Management Entity

**Description:**

Extends to all HHSC regional systems the authority of the executive branch to transfer the management of facilities of a regional system to a nonprofit management entity.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

